

AMERICAN ARBITRATION ASSOCIATION
230 SOUTH BROAD STREET, 12TH FLOOR
PHILADELPHIA, PA 19102-4106

Case No. 14 390 00236 09

In the Matter of Arbitration Between: :

CITY OF PHILADELPHIA :

Employer : OPINION

And : AND

FRATERNAL ORDER OF POLICE : AWARD
LODGE NO. 5

Union :

ARBITRATOR Robert E. Light, mutually chosen
by the parties pursuant to the rules
and regulations of the American
Arbitration Association

HEARING: September 1, 2011, in Philadelphia
Pennsylvania.

APPEARANCES: For the City
Colin S. Haviland, Esq.



For the Union
Stephen J. Holroyd, Esq., (Jennings Sigmond, PC)
John R. McGrody, VP, FOP
Sgt. Sean Dandridge, Grievant

ISSUE: Was there just cause for the three (3) day
disciplinary suspension imposed on Sgt. Dandridge?
If not, what shall be the remedy?

BACKGROUND

A hearing in this matter was held on September 1, 2011 in Philadelphia, Pennsylvania with both sides present and duly represented by counsel and with both sides having full and complete opportunity to offer evidence and argument in support of their respective contentions. In lieu of the filing of post-hearing briefs, both counsel decided to sum up orally at the hearing, after which time the hearing was declared closed.

The City of Philadelphia (hereinafter the City or the Employer) and F.O.P. Lodge No. 5 (hereinafter the Union) are signatories to a current collective bargaining agreement. A grievance was filed by the FOP dated November 21, 2008 which grievance reads as follows:

11/21/2008

Captain Gregory Malkowski
Labor Relations Unit Rm 103
Police Administration Building
8th and Race Sts.
Philadelphia, PA 19106

Statement of Grievance:

The city is violating numerous provisions of the collective bargaining agreement by:

SERGEANT SEAN E. DANDRIDGE PAYROLL NUMBER [REDACTED]

Is being suspended for three days without just cause.

REMEDY REQUEST:

By way of remedy it is requested that all bargaining unit members directly and indirectly affected by each and every aspect of any such violation be made whole in all respects, regardless of whether specifically identified herein, but not limited to:

Make whole for all losses.

Respectfully Submitted,
John R. McGrody,
Vice-President

The matter was not resolved during the course of the grievance procedure so that it was submitted to arbitration under the auspices of the American Arbitration Association, from whose panel of arbitrators the undersigned was duly chosen.

THE FACTS

The grievant here, Sgt. Sean Dandridge, is employed by the City of Philadelphia as a Sergeant and has been with the Police Department for some seventeen (17) years, serving as a Sergeant for approximately ten (10) years. An incident occurred on November 22, 2006 which led to the grievant receiving a three (3) day disciplinary suspension covering the period of January 27, 30 and 31, 2009. The notice of suspension without pay is contained in a document introduced into evidence at the hearing as Joint Exhibit No. 3 and that document reads as follows:

You are hereby notified that you are suspended without pay from the above position for a period of Three (3) working days covering the period from the beginning of business on January 27, 20, 31, 2009 at the close of business for the following reasons (clearly state specific reasons for this action and summarize the facts in support thereof with sufficient particularity to allow the employee to prepare a defense to the charges)

NEGLECT OF DUTY, Section 4.25: Failure to conduct proper, thorough and complete investigation or failure to thoroughly search for, collect, preserve and identify evidence of persons, property and locations in any arrest or investigation.

In that on Thursday, 11/22/06, approximately 11:00AM, you responded to a radio call at 700 Market Street for a fight on the highway and also a call for a priority back up for an off duty officer. On arrival, you were met by P/O R [REDACTED] S [REDACTED] # [REDACTED] detailed into the DPR Unit and in plainclothes, who told you that a homeless woman had taken a soda without paying for it from Dunkin Donuts at 7th and Market Streets. P/O S [REDACTED] and the homeless woman became involved in a physical altercation on the street. P/O S [REDACTED] alleged that after the homeless woman assaulted her by scratching her, she (P/O S [REDACTED]) punched the woman and a struggle ensued. An independent witness called 9-1-1 after he observed P/O S [REDACTED] assaulting the homeless woman on the street. After your investigation, you made the determination that the assault on P/O S [REDACTED] and the theft of the soda from Dunkin Donuts did not warrant a further investigation. An Internal Affairs investigation into this incident determined that you failed to conduct a

proper investigation. This entire incident should have been reviewed by Central Detectives or evaluated by a lieutenant. In addition, when you retrieved a video or CD of the initial incident from the security guard, J. S. Liberty Resources, 714 Market Street, you sent it through police mail to the assigned IAD investigator who never received it. The CD should have been transported personally up to Internal Affairs or placed on a property receipt and properly submitted as evidence. This is a violation of the above section of the Disciplinary Code.

Joint Exhibit No. 3.

As is noted in the Notice of Suspension, the grievant responded to a radio call on Thursday, November 22, 2006 in order to support another Officer who was on the scene. That Officer told the grievant that she had been assaulted by a homeless woman. The grievant investigated and made a determination that further investigation was not necessary and did not call a supervisor nor did he present the matter to Central Detectives. Further, it appears that a video was taken but was never turned in to the proper authorities.

An investigation occurred and, while it was acknowledged that a Sergeant can exercise discretion when he is called to the scene, nevertheless three (3) witnesses said that a woman was beaten up and this was never reported to the grievant's supervisor or to the detectives. Sergeant Dandridge testified in his own defense at the arbitration hearing. Quite candidly, much of the Sergeant's testimony was of a "rambling variety" but, in any event, he testified that he saw no evidence of an assault. It was his testimony that he did not call Central Detectives since there was no assault and that he exercised his discretion on the scene. As noted, the grievant received a three (3) day disciplinary suspension for neglect of duty (Section 4.25) specifically "failure to conduct proper, thorough and complete investigation or failure to thoroughly search for, collect, preserve and identify evidence of persons, property and locations in any arrest or investigation." As regards failure to place the CD on a property receipt, this was not done according to proper procedures. However, it appears that the most serious infraction was the failure to refer the

matter to a Lieutenant or Detective. Based upon this incident, the grievant received a three (3) disciplinary suspension which, as was stipulated at the hearing, would be within the range of penalties for a violation of this nature.

POSITION OF THE CITY

The City takes the position that there was just cause for the three(3) day disciplinary suspension imposed upon Sergeant Dandridge and requests that the arbitrator sustain its action in that regard. It maintains that the grievant failed to refer the matter to a Lieutenant or a Detective; the grievant violated Article 91 in that he did not properly handle the evidence and, in short, the grievant simply failed to properly handle this matter and requests that the arbitrator sustain its action in imposing the three (3) day disciplinary suspension.

POSITION OF THE FOP

The FOP takes the position that there was not just cause for the three (3) day disciplinary suspension imposed upon Sergeant Dandridge and requests that the discipline be rescinded and that the grievant be made whole. The FOP argues that what is involved here is a "judgment call" and that all that the City is doing here is "Monday morning quarterbacking". It argues that all that is occurring here is that the grievant is being penalized for making a judgment call which, in its view, was proper. It asks that the grievant be made whole.

DISCUSSION

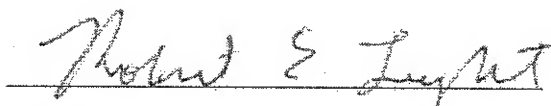
The arbitrator has carefully weighed all of the evidence in this case including the testimony of the witnesses at the hearing, the arguments of respective counsel as set forth at the hearing, the contract and the exhibits prior to reaching his decision. Initially, the arbitrator notes that what is involved here is a three (3) day suspension which, as was stipulated by the parties at the hearing, is within the range of penalties for an occurrence such as this. While the grievant

maintains that he saw no assault so that there was no need to refer the matter to anyone, the arbitrator finds that his judgment was incorrect in that Article 91 was violated by not properly handling the evidence and further the facts reveal that the grievant should have referred the matter to a Detective or a Lieutenant. This was confirmed by the eyewitness account at the scene. Further, it appears that the grievant failed to place the CD on a property receipt which is violative of proper police procedures. While the grievant attempted to explain his actions on the day of the incident, the arbitrator finds that his explanation was unconvincing and not persuasive. In sum, it is the opinion of this arbitrator that the City acted properly in assessing a three (3) day disciplinary suspension upon Sergeant Dandridge for neglect of duty which is in violation of 4.25 namely failure to conduct a proper investigation. This penalty falls within the range of penalties appropriate for this kind of violation namely a reprimand up to five (5) days. Therefore, the grievance is denied.

Therefore the undersigned having duly heard all of the proofs and allegations of the parties to this proceeding makes the following:

AWARD

There was just cause for the three (3) day disciplinary suspension imposed on Sergeant Dandridge. Grievance denied.



ROBERT E. LIGHT, ARBITRATOR

STATE OF NEW JERSEY:

ss

COUNTY OF SOMERSET:

On this 19th day of September 2011 before me personally came and appeared ROBERT E. LIGHT, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.


LEE M. MASELLI

NOTARY STATE OF NEW JERSEY

MY COMMISSION EXPIRES MARCH 3, 2015